

SUPREME COURT OF INDIA

L.S.Shivakumar

Vs.

L.B.Sannaiah & Ors.

C.A.No.2825 of 2015

(Dipak Misra and Prafulla C.Pant,JJ.,)

04.09.2015

JUDGMENT

Dipak Misra, J.

SLP(Civil)No. 30338 of 2014

1. In this appeal, by special leave, the legal substantiality and acceptability of the judgment and order dated 29.08.2014 passed by the Division Bench of the High Court of Calcutta in AST No. 177/2013 whereby it has overturned the decision of the learned Single Judge requiring the respondent-writ petitioner to knock at the doors of the alternative forum by way of appeal, on the foundation that the authority that had passed the adverse order against the first respondent had no jurisdiction, and assuming he had the jurisdiction, it stood extinguished by expiration of the time limit stipulated in certain paragraphs of the West Bengal Kerosene Oil Control Order, 1968 (for brevity, ‘the Control Order’), is called in question.

2. The facts which need to be explicated for adjudication of this appeal are that the first respondent was granted the licence for carrying on the business of superior kerosene oil as an agent by the Joint Director of Consumer Goods, West Bengal in accordance with the paragraph 5(1) of the Control Order. The monthly allocation of public distribution system of superior kerosene oil to the said respondent was fixed by the Director of Consumer Goods, West Bengal at 1,82,000 litres per month. On 10.8.2012 a physical inspection was carried out by the Area Inspector attached to the office of the Sub Divisional Controller, Food and Supplies, Burdwan (for short, “SCFS”) at the depot of the respondent. The concerned Inspector submitted the report to the SCFS stating that 71,494 litres of superior kerosene oil had been delivered in excess by the dealer. On 8.4.2013, the SCFS issued a notice seeking explanation about the discrepancy pointed out by the Area Inspector. On receipt of the said show cause notice, the first respondent submitted his explanation on 16.4.2013. The SCFS afforded an opportunity of personal hearing to the dealer on 3.5.2013 and the same was availed of. After conducting the enquiry, the SCFS forwarded the entire record to the District Controller, Food and Supplies Department, Burdwan, who in turn sent the entire case records

to the Director of Consumer Goods for appropriate decision. After scrutiny of the records, the Director of Consumer Goods issued a show cause notice to the dealer on 26.6.2013. The first respondent replied to the same on 28.6.2013 through his counsel stating, inter alia, that under the Control Order, after the licence is issued to an agent by the Office of the Director, the District Magistrate having jurisdiction or any officer authorised by him, is alone empowered to look into the functioning of the said agency and to give directions to him and/or initiate action against the concerned agent. Additionally, it was also put forth that the second show cause notice on the self-same allegations was untenable in law and accordingly prayer was made to withdraw and/or rescind the notice and take steps for disposal of the matter in terms of the provisions of the Control Order.

3. As the factual matrix would further undrape, the Director of Consumer Goods, vide order dated 22.7.2013 narrated the facts in detail and came to hold that SCFS has the authority to ask for explanation regarding distribution of superior kerosene oil in his jurisdiction; and that the Director of Consumer Goods being the Licensing Authority, can exercise the power to issue show cause notice and after giving the delinquent agent a fair opportunity of being heard, pass appropriate orders. The said order also would reflect that the counsel for the first respondent had appeared before the Director on 17.7.2013. The concerned Director analysed the factual matrix and in exercise of power conferred on him under paragraph 9(ii) of the Control Order imposed a penalty of Rs.26,08,816.00 and further directed reduction of monthly allocation of superior kerosene oil of the agent by 12,000 litres for a period of one year.

4. The order passed by the Director was assailed by the agent in W.P.No. 25204 (W) of 2013. The learned Single Judge vide order dated 22.08.2013 referred to paragraph 10 of the Control Order which provides for an appeal to be preferred and accordingly directed that if the agent prefers an appeal by 6.9.2013, the appellate authority shall dispose of the same by 31.12.2013. The learned Single Judge further directed that the agent shall maintain with utmost care an inventory of stocks and accounts for periodical submission to the authorities and the penalty amount should be deposited by 6.9.2013 and the said penalty amount shall be kept in a separate interest bearing account.

5. Being aggrieved by the aforesaid order, the respondents 1 and 2 preferred an appeal being AST No. 177 of 2013 before the Division Bench. It was urged in the intra-court appeal that the proceeding before the Director of Consumer Goods was patently without jurisdiction, for power of cancellation or suspension could only be exercised by the Director or District Magistrate having jurisdiction and in the case at hand the District Magistrate, Burdwan is the competent authority to exercise the power under paragraph 9 of the Control Order and not the Director of Consumer Goods; that assuming the Director had jurisdiction, the proceeding that was initiated had lapsed after expiry of 30 days after the date of issuance of the show cause notice by the Director; and that in any case the proceeding was initiated by SCFS and he could not have sent the record to the Director after expiry of 30 days when the proceeding stood lapsed. It was also urged that the order in question was served on the first respondent on 12.8.2013 and, therefore, the date mentioned in the order could not validate the same as it was not dispatched within 30 days. The submissions put forth by the first respondent before

the Division Bench of the High Court were seriously contested by the learned counsel for the Department.

6. The Division Bench posed the following two questions:-

“a. Who is the competent authority to take disciplinary action either by cancellation or suspension of the licence of a S.K. Oil agent appointed in a district outside the Calcutta?

b. Whether the order of cancellation or suspension of licence in terms of Paragraph 9 of the West Bengal Kerosene Control Order will become effective on the date of passing of the said order or when the said order is communicated to the concerned party?”

7. After posing the aforesaid two questions, the Division Bench took note of the fact that the respondent-dealer was authorised to carry on the business as an agent of super kerosene oil in the district of Burdwan and the SCFS had issued a show cause to the respondent and instead of taking the final decision himself, forwarded the records to the Director of Consumer Goods for necessary action who issued a fresh show cause notice on the self-same allegations and passed a order on 22.07.2013 which was without jurisdiction in view of the conjoint reading of the language employed in paragraphs 8, 9 and 10 of the Control Order. Thereafter, the Division Bench proceeded to deal with the issue whether the Director had passed the order imposing penalty within 30 days from the date of serving the show cause notice in terms of paragraph 9 of the Control Order, for the same was served on the dealer on 12.8.2013. The Court took note of the contention of the advanced by the learned counsel for the appellants therein that the order under Paragraph 9 passed by the competent authority in writing within 30 days from the date of serving the show cause notice should mean the communication of the order in writing within the said period of 30 days and not from the signing of the order and accepted the same. To arrive at the said conclusion, the appellate Bench placed reliance on *Rani Sati Kerosene Supply Company and Others v. The State of West Bengal and Others*¹. It referred to paragraphs 27 and 29 of the said decision and thereafter came to hold thus:-

“For the reasons discussed hereinabove, we hold that the Sub-Divisional Controller, Food and Supplies, Burdwan lawfully initiated the proceeding against the appellant/writ petitioner no. 1 by issuing show cause notice but did not conclude the same within 30 days as required under paragraph 9 of the West Bengal Kerosene Control Order, 1968. We further hold that the Director of Consumer Goods had no jurisdiction and/or authority to initiate any proceeding against the appellant/writ petitioner no. 1 in terms of paragraph 9 of the West Bengal Kerosene Control Order since the licence was granted to the appellant/writ petitioner no. 1 for carrying on business as S.K. Oil agent in the district of Burdwan which is outside Calcutta. In the result, the impugned order dated 22nd July, 2013 passed by the Director of Consumer Goods cannot survive and is liable to be set aside since the said Director had no authority and/or jurisdiction to pass any order under paragraph 9 of the West Bengal

Kerosene Control Order, 1968 in respect of S.K. Oil agent of Burdwan. Therefore, the impugned order dated 22nd July, 2013 issued by the Director of Consumer Goods in respect of the appellant/writ petitioner no. 1 is quashed.” Being of this view, it allowed the appeal and set aside the judgment of the learned Single Judge of the High Court.

8. We have heard Mr. Mohan Parasaran, learned senior counsel along with Mr. Anip Sachtay, learned counsel for the appellants and Mr. Vivek K. Tankha, learned senior counsel along with Mr. Rajan K. Choursia, learned counsel for the first respondent.

9. At the outset, it is obligatory on our part to state that when the final hearing of the appeal took place, we were apprised at the Bar that SCFS who represents the District Magistrate, has issued a fresh show cause notice in respect of self-same lis and accordingly the following order was passed:-

“In course of hearing we have been apprised that the Sub-Divisional Controller, Food and Supplies, Burdwan, who represents the District Magistrate, Burdwan, has issued a fresh show cause notice on the self-same lis and against its notice to show cause, an appeal has been preferred before the Director of Consumer Goods in Kolkata. Be it noted, the show cause number is Memo No. 4159/SCF&S/BDN/14. The appeal arisen out of the said show cause notice before the appellate authority, shall remain stayed till the pronouncement of the judgment.”

10. We shall advert to the legal permissibility of the second show cause in respect of the same alleged deviation by the agent at a later stage, if required. As the factual foundation would exposit, the thrust of the controversy is whether the Director of Consumer Goods, Food and Supplies Department has the jurisdiction to take action in the manner he has taken; and whether the order has to be passed and communicated within 30 days under the Control Order and the consequence of failure in such a situation. The Control Order was brought into force on 26.6.1968 in exercise of powers conferred by sub-section 1 of Section 3 of the Essential Commodities Act, 1955 read with clauses (d), (e), (h) and (j) of sub-section 2 of that Section and Section 7(1) of the said Act and the Order No. 26(11)- Com.Genl/66, dated 18th June, 1966 feeling the necessity and expediency for proper maintenance of supplies and for securing the equitable distribution and availability at fair prices of kerosene in West Bengal. Paragraph 3(a) of the Control Order defines “agent” which reads as under:-

“3(a) “agent” means a person who has been appointed as an agent of an oil distributing company by such company and has been granted a licence under paragraph 5 of this Order.”

11. Paragraph 3(c) of the Control Order defines “dealer” which reads as follows:-

“3(c) “dealer” means a person who has been granted a licence under paragraph 6 of this Order authorising him to carry on trade in kerosene.”

12. Paragraphs 3(d) and 3(e) of the Control Order define the “Director” and the “District Magistrate” respectively, which reads as follows:-

3(d) “Director” means the Director of Consumer Goods, Department of Food and Supplies, Government of West Bengal and includes any officer, not below the rank of Assistant Director, Directorate of Consumer Goods, Food and Supplies Department, Government of West Bengal who can perform all the functions of the Director and this order including cancellation of licence.

3(e) “District Magistrate” includes the Deputy Commissioner of a district and also includes any person not below the rank of a Sub-divisional Controller of Food and Supplies in the Department of Food and Supplies, Government of West Bengal, authorised by the District Magistrate or Deputy Commissioner, as the case may be, in writing to perform all or any of the functions of the District Magistrate under this Order.”

13. Paragraph 5 of the Control Order deals with grant of licence to an agent. It reads as under:-

“5. Grant of licence to agent – (1) The Director may grant a licence to any agent in West Bengal authorising him to carry on trade in kerosene as such agent.

(2) A licence granted under sub-paragraph (1) shall be in Form A and shall be subject to such conditions as are specified therein and such other conditions as the Director may lay down from time to time in the interest of fair distribution of kerosene within the State.

(3) No agent shall sell, supply or transfer kerosene to any person other than a dealer duly licensed under paragraph 6 of this Order, or a holder of a permit or delivery order issued under paragraph 11 of this Order.”

14. Paragraph 6 deals with grant of licence to a dealer. It is as follows:-

“6. Grant of licence to dealer – (1) the Director or the District Magistrate having jurisdiction may grant a licence to any person authorising such person to carry on trade in kerosene as a dealer.

(2) A licence granted under sub-paragraph (1) shall be in Form B and shall be subject to such conditions as are specified therein and such other conditions as the Director or the District Magistrate having jurisdiction may impose from time to time for the sake of fair distribution of kerosene.”

15. Paragraph 9 of the Control Order deals with cancellation or suspension of licence. The same being of significance, is reproduced in entirety herein below:-

“9. Cancellation or suspension of licence – If it appears to the Director or the District Magistrate having jurisdiction that an agent or a dealer has indulged in any malpractice or contravened any provision of this Order or any condition of the licence or any direction given under paragraph 12 of this Order, he may forthwith as the Agent or Dealer to show cause for violations made or suspend the licence: Provided that the agent or the dealer who has been asked to show- cause or whose licence has been suspended shall be given an opportunity of being heard and the Director or the District Magistrate having jurisdiction shall pass an order in writing within 30 days from the date of serving the show-cause notice or suspension of the licence taking any or all of the actions given below. He may let off the Agent or Dealer if sufficient cause has been shown. He may pass an order by imposing a penalty which according to the gravity of the violations made will not be less than Rs.10,000/- in case of an Agent and Rs.2,000/- in case of a Dealer and revoke the suspension order if already served. He may cancel the licence: Provided that the order shall be passed ex parte if the Agent or the Dealer whose licence has been so suspended or on whom show-cause notice has been served fails to appear at the hearing.”

16. Paragraph 10 of the Control Order which provides for appeal is extracted hereunder:-

“10. Appeal – (a) Any person aggrieved by an Order passed under paragraph 8 or paragraph 9 of this Order, may within 30 days from the date of the order, prefer an appeal to the State Government in the Food and Supplies Department.

(b) elsewhere, –

(i) where the order is passed by the District Magistrate or the Deputy Commissioner of a district, to the State Government,

(ii) where the order is passed by any other officer authorised by the District Magistrate or the Deputy Commissioner of a district under clause

(e) of paragraph 3, to the District Magistrate or the Deputy Commissioner, as the case may be, of the district.”

17. We have reproduced the relevant paragraphs of the Control Order to understand the schematic purpose and effect of the Control Order. Paragraph 5, as it envisages, empowers the Director to grant licence to any agent in West Bengal authorising him to carry on trade in kerosene as such agent. Paragraph 6 empowers the Director or the District Magistrate having jurisdiction to grant the licence to any person as a dealer. As the scheme would reflect there is a distinction between an “agent” and a “dealer”, for the agent is granted licence under paragraph 5 of the Control Order whereas dealer is granted licence under paragraph 6 of the Control Order. Paragraph (7) provides for renewal of licences, licence fees, etc. The relevant part of the said paragraph is as follows:-

“7. Renewal of licences, licence fees, etc. – (1) Every licence issued under paragraph 5 or paragraph 6 of this Order shall be valid up to 31st December next following the date of issue and may, at the discretion of the authority by which the licence was granted, be renewed for successive periods of one year on an application made in that behalf to such authority in the manner provided hereinafter before the expiry of the date of validity of the licence:

Provided that –

(i) the Director may, by notification in the Official Gazette, extend the period of validity of existing agents’ licences issued under paragraph 5 of this Order for such period, not exceeding 60 days, beyond the 31st December, hereinbefore mentioned, as he may, for reasons to be recorded in writing, think fit; and

(ii) the Director, or the District Magistrate having jurisdiction, may, by notification in the Official Gazette, extend the period of validity of existing dealers’ licences issued under paragraph 6 of this Order for such period, not exceeding 60 days beyond the 31st December, hereinbefore mentioned, as he may, for reasons to be recorded in writing, think fit: Provided further that the Director or the District Magistrate, as the case may be, may, by notification in the Official Gazette, extend the time for filing of application for renewal of licences:

Provided also that on an application made by a licensee in that behalf, the authority by which the licence was issued may, if he considers it expedient so to do, renew a licence issued under paragraph 5 or paragraph 6 of this Order, for a maximum period of three years at a time on payment in non-judicial stamps of the fees for renewal of licences referred to in sub-paragraph (3) of this paragraph, for each year of renewal or part thereof.

(2) Every application for the issue of licence under paragraph 5 or paragraph 6 of the Order or for the renewal of such licence under this paragraphs shall be made to the appropriate authority in Form C”.

18. On a reading of that paragraph it is clear that power conferred on the Director and the District Magistrate are different, for the Director is a higher authority and the rule clothes him with more authority. Needless to say, the said paragraph has to be read in juxtaposition with other paragraphs. It is clear from paragraph 5 that the Director alone is authorised to grant a licence to an agent whereas a dealer’s licence can be granted either by the Director or by the District Magistrate. Sub-para 3 of Paragraph 5 of the Control Order is also indicative of the fact that the agent operates at a larger scale than the dealer. An agent can sell, supply or transfer kerosene to a dealer, holder of a permit or delivery order and no other person. Sub-para 2 of Paragraph 6 of the Control Order is differently worded as it postulates that conditions can be specified by the Director or the District Magistrate having the jurisdiction. The conditions imposed may vary from time to time for the sake of fair distribution of kerosene. The authorities are also different as per the dictionary clause.

19. In this backdrop, we are required to understand the language employed in paragraph 9 of the Control Order. The said paragraph, as we perceive, is rather loosely and ambiguously worded. It becomes obvious when we appreciate the Control Order on the bedrock of schematic interpretation. It is worth noting that while paragraph 5 deals with grant of licence to an agent by the Director, paragraph 6 deals with grant of licence to a dealer by the Director or the District Magistrate. The term “District Magistrate” as per paragraph 3(e) of the Control Order includes authorities mentioned therein. Paragraph 9 which pertains to cancellation or suspension of licence is a composite paragraph and stipulates when and who can cancel or suspend a licence of an agent or a dealer. The said power is exercised, when an agent or dealer has indulged in any kind of malpractice or contravened any provision of the Control Order or conditions applicable, etc. On a literal reading of paragraph 9, it may convey or one may be emboldened to urge that Director as well as the District Magistrate including the authorised officers mentioned in paragraph 3(e), have concurrent jurisdiction to cancel or suspend the licence granted to an agent or a dealer. However, such an interpretation could not be occurred with the legislative intent and would lead to absurdity and anomaly. Therefore, such kind of an interpretation has to be avoided. We are disposed to think so inasmuch as an agent, as noted above, is appointed by the Director and has the authority to carry on trade of kerosene within the entire State. But a dealer, cannot supply, sell or transfer kerosene to any person other than a holder of a permit, delivery order or through a dealer specified in paragraph 6. That apart, it is noticeable that sub- paragraph (e) of paragraph (3) a District Magistrate would include a sub- Divisional Controller of Food and Supplies, authorised by the District Magistrate or Deputy Commissioner and District Magistrate is for a specified small area within the State. He cannot exercise jurisdiction in respect of an area beyond the geographical boundaries of the area/district. In such a situation to place a construction on Paragraph 9 that the Director as well as the District Magistrate would have concurrent jurisdiction would be inapposite. In our considered view, a logical and reasonable interpretation to paragraph 9 of the Control Order has to be preferred instead of adopting the loose meaning in the literal sense. Such an interpretation would be in consonance with the principles of harmonious construction, that is, harmonious reading of paragraphs 5, 6, 7 and 9 of the Control Order. It is based on the premise that the authority who has the right to grant licence has the authority to suspend or cancel the licence. In this regard, we may fruitfully reproduce a passage from *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others*², wherein it has succinctly been stated thus:-

“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute

is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

20. We have referred to the said passage, for the Control Order was brought into force for maintenance of supplies and for securing the equitable distribution and availability of kerosene at fair prices in West Bengal. It has controlling measures and it subserves the public purpose. The intent of the Control Order is to totally prohibit creation of any kind of situation which will frustrate the proper distribution of kerosene oil. The purpose of any Act or Rule or Order has its own sanctity. While interpreting the same, the text and context have to be kept in mind. In this regard, we may usefully refer to an authority in *Workmen v. Dimakuchi Tea Estate*³, wherein the three-Judge Bench while interpreting the expression “any person” occurring in Section 2(k) of the Industrial Disputes Act, 1947 observed that the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. Elaborating further, the Court proceeded to state:-

“It is well settled that “the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained”. (Maxwell, Interpretation of Statutes, 9th Edn., p. 55).”

21. Keeping in view the aforesaid rule of interpretation, we are constrained to think that it would be incongruous to hold that even when the licence of an agent at the State level is granted and issued by the Director, a District Magistrate, as defined in paragraph 3(e) of the Control Order, in exercise of concurrent jurisdiction can suspend or cancel the State level licence. Be it noted, as per Section 21 of the General Clauses Act, power to issue notification/ order/rules/bye-laws, etc. includes the power to amend/ vary or rescind. Though the said provision is not applicable, yet it is indicative that generally unless the statute or rule provides to the contrary, either expressly or impliedly, issuing or appointing authority would also exercise the right to cancel or suspend the licence. As has been stated earlier, on a cursory reading it may appear that paragraph 9 confers concurrent jurisdiction. The said paragraph deals with suspension or cancellation of licence and is a composite paragraph, which applies to licence granted to an agent as well as the dealer. It refers to the power of a Director and District Magistrate having jurisdiction. The words “District Magistrate having jurisdiction” are also used in paragraph 6. The expression “District Magistrate having jurisdiction” reflects the legislative intent that District Magistrate having jurisdiction under paragraph 9 would be the same District Magistrate or authority which has the power to grant licence to a dealer in Form B under paragraph 6. Read in this manner, we have no hesitation in holding that it is the Director alone who could have issued the show cause notice under

paragraph 9 and has the authority and jurisdiction to pass an order in terms of paragraph 9 of the Control Order. The earlier notice issued by SCFS has to be regarded at best a show cause notice to ascertain and affirm facts alleged and it ensured a response and reply from the first respondent. The said notice by SCFS could not have culminated in the order under paragraph 9, for he has no authority and jurisdiction to pass an order suspending or cancelling the licence. Therefore, the matter was rightly referred to the Director for action, if required, in terms of paragraph 9 of the Control Order.

22. Having held that, we think it appropriate to refer to the aspect of communication pertaining to period as prescribed in paragraphs 9 and 10. The High Court has taken note of the fact that SCFS had issued the notice of show cause to which the agent had replied. The said authority has forwarded the matter to the Director, Consumer Goods for his perusal and necessary action, who in exercise of his authority had passed the order on 22.7.2013 which was received by the first respondent on 12.8.2013. The Division Bench has opined that as per Paragraph 9, the order has to be passed within 30 days after the issue of the notice to show cause and same has to be communicated within the said period and passing an order on the file would not tantamount to an order.

23. The Division Bench, as it appears, has been guided by the decision in Rani Sati Kerosene Supply Company and Others (supra). In the said case the agent had challenged the order of suspension-cum-show cause notice and the order of cancelling the agency licence. The High Court had taken note of the contention that assuming the Director had jurisdiction, the order having been communicated beyond 30 days from the issue of the order of suspension, it was liable to be set aside. After stating the facts, the earlier Division Bench proceeded to interpret Paragraphs 9 and 10 of the Control Order and opined thus:-

“29. After going through the aforesaid two paragraphs, I find that against an order of cancellation of licence, there is a provision of appeal to be availed of within 30 days from the date of the order. There is, however, no power conferred upon the appellate authority to entertain such appeal after the period of limitation by condoning the delay. If I accept the contention of Mr. Chakraborty, the learned Counsel appearing for the State that the date of communication of the order is insignificant, in that case, the right of appeal conferred upon the aggrieved agent against an order of cancellation can easily be frustrated by communicating the order after the expiry of 30 days from the date of the order. Therefore the phrase "by an order in writing to be made" appearing in the proviso to the Paragraph 9 is to be construed as "by an order in writing to be communicated" and so long the order is not communicated, it should be presumed that the order has not been passed and consequently, a duty is cast upon the authority concerned to communicate the order to the aggrieved, either direct or constructively. Mere passing of an order and keeping it in the file will not fulfil the requirement of the said Paragraph 9.

30. Mr. Banerjee, the learned advocate appearing for the petitioners, has in this connection placed strong reliance upon a decision of the Supreme Court in the case of Assistant Transport Commissioner, Uttar Pradesh v. Nand Singh, [reported in 179

ELT (510) where the Apex Court while considering Section 35 of the Central Excise and Salt Act, 1944 held that the date of communication of the order will be the starting point of limitation for filing an appeal and not the date of the order, because, the order would be effective against the person affected by it only when it comes to the knowledge either direct or constructively, otherwise not. The Supreme Court further held that mere writing of an order in the file, kept in the office of the authorities, is no order in the eye of law.

31. The aforesaid decision of the Supreme Court supports the contention of the petitioners that the order of cancellation, for all practical purposes, should be deemed to have been passed on January 30, 2004 when the same was faxed for communication to the petitioners and served upon them. Thus, the order of cancellation of licence was, in the eye of law, passed beyond 30 days from the date of passing the order of suspension and consequently, the order of suspension had automatically ceased to have any effect from January 10, 2004, and the order of cancellation not having been passed in accordance with law within 30 days from December 10, 2003, the Director could not pass any such order beyond that date. Thus, the order impugned is liable to be quashed also on the aforesaid ground.” The said judgment is the fulcrum of reasoning of the impugned judgment.”

24. The aforesaid decision, as is evident, lays down that passing of the order and communication thereof must be within 30 days and on that basis has opined that the order passed on the file and not communicated to the person aggrieved is not an order that can be taken cognizance of. There can be no scintilla of doubt that unless an adverse order is communicated that does not come into effect. Passing of an order on the file does not become an order in the eye of law. But the core question would be, if an order is passed within 30 days and communicated thereafter, what would be the effect. In the instant case, as the factual matrix would unveil, the order was passed before expiration of 30 days, but the same was served on the first respondent beyond 30 days. The thrust of the matter is whether the order has to be passed and communicated within 30 days. Paragraph 9 of the Control Order requires the competent authority to pass an order within 30 days from the date of serving the show cause notice or the suspension of licence. The word used is “shall”. Paragraph 10 of the Control Order enables the aggrieved person to prefer an appeal against an order passed under Paragraph 8 or 9 within 30 days to the State Government in Food and Supplies Department. In this context, reference to the authority in MCD v. Oimat Rai Gupta and others⁴ is of significance. In the said case, the Court was interpreting the word “made” occurring in Section 126(4) of the Delhi Municipal Corporation Act, 1957, which stipulated that no amendment under sub-section 1 shall be made in the assessment list in relation to certain aspects. It was contended before this Court on behalf of the Municipal Corporation of Delhi that the use of the expression “made” occurring in the said sub-section would necessitate communication of the order. It was contended before this Court by the Corporation that the distinction must be made between communication of order and making thereof inasmuch as whereas communication may be necessary so as to enable an assessee to prefer an appeal against the order of assessment but only signing of the order would subserve the purpose of saving the period of limitation. The submission was that the expression “no

amendment under sub-section (1) shall be made” should be given a liberal interpretation. Reliance was placed on the pronouncement in *CCE v. M.M. Rubber and Co.*⁵ The said stand was controverted on the ground that the Act having been enacted for the purpose of controlling the abuse of power on the part of the Commissioner, the same should be given purposive meaning so as to fulfil the purport and object of the legislation. While dealing with the period of limitation, the Court observed:-

“16. In interpreting a provision dealing with limitation, a liberal interpretation in a situation of this nature should be given. Although an order passed after expiry of the period of limitation fixed under the statute would be a nullity, the same would not mean that a principle of interpretation applied thereto should not (sic) be such so as to mean that not only an order is required to be made but the same is also required to be communicated.

17. When an order is passed by a high ranking authority appointed by the Central Government, the law presumes that it would act bona fide. Misuse of power in a situation of this nature, in our opinion, should not be readily inferred. It is difficult to comprehend that while fixing a period of limitation, Parliament did not visualise the possibility of abuse of power on the part of the statutory authority. It advisedly chose the word “made” and not “communicated”. They, in ordinary parlance, carry different meanings.”

25. After so stating, the Court proceeded to interpret the term “made” and observed that meaning of a word depends upon the text and context and it will also depend upon the purport and object it seeks to achieve. The two-Judge Bench referred to *Surendra Singh v. State of U.P.*⁶, *Harish Chandra Raj Singh v. Dy. Land Acquisition Officer*⁷ and *K.Bhaskaran v. Sankaran Vaidhya Balan*⁸. The Court reproduced paragraphs 12 and 18 from *M.M. Rubber and Co.* (supra). They read as follows:-

“12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.” xxxxx xxxxx xxxxx “18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make

an order the date of exercise of that power and in the case of exercise of suo motu power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the Government is bound by the proceedings of its officers but persons affected are not concluded by the decision." Eventually, the Court came to hold thus:

"An order passed by a competent authority dismissing a government servant from services requires communication thereof as has been held in *State of Punjab v. Amar Singh Harika*⁹ but an order placing a government servant on suspension does not require communication of that order. (*See State of Punjab v. Khemi Ram*¹⁰.) What is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated."

26. We have referred to the aforesaid authority in extenso as the Division Bench has in one line stated that the said decision makes it clear that communication of an order is necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, then the said order is required to be communicated. To arrive at the said conclusion, as has been stated earlier, the Division Bench has found support from *Rani Sati Kerosene Supply Company and Others* (supra) wherein it has been held that if an order is communicated after 30 days, an order of cancellation can easily be frustrated and, therefore, the phrase by an order in writing to be made appearing in proviso to Paragraph 9 of the Control Order is to be construed as by an order in writing to be communicated.

27. The Division Bench has read the prescription of 30 days passing of an order in writing within 30 days from the date of serving the show cause notice or suspension of licence to be mandatory. To elaborate, if the order is not passed within the said period, the authority cannot pass any order or if it passes an order, it is a nullity. In this context, we may fruitfully refer to a passage from G.P. Singh's book, as has been reproduced by the three-Judge Bench in *Kailash v. Nankhu and others*¹¹. It reads as under:-

"Justice G.P. Singh notes in his celebrated work *Principles of Statutory Interpretation* (9th Edn., 2004) while dealing with mandatory and directory provisions:

"The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted

passage Lord Campbell said: ‘No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.’ ” (p. 338) “ ‘For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.’ ” (pp. 339-40)”

28. Keeping in view the aforesaid principles, if it is held that the order would become a nullity, it really does not serve the purpose of the Control Order. On the contrary, it frustrates it and, therefore, the interpretation placed by the High Court on Paragraph 9 in juxtaposition with Paragraph 10 to treat the order as null and void is neither correct nor sound. It is desirable that the authority shall pass an order within 30 days from the date of show cause. Be it noted that there are two contingencies when the show cause is issued for violation or when an order of suspension is passed. There can be no trace of doubt that the order will take effect from the date when it is served. The order, unless it is served, definitely neither the agent nor the dealer would suspend its activities or obey any order, for he has not been communicated. Regard being had to this aspect, it is to be seen whether the prescription of 30 days from the date of order as provided in Paragraph 10 would make the order null and void. The order passed by the authority comes into effect when it is communicated. An order passed in file in case of this nature would not be an effective order, for it is adverse to the interest of the dealer or agent and, therefore, paragraph 10 has to be given a purposive meaning. It has to convey that 30 days from the date of the order which is an effective order, and that is the date of communication. Unless such an interpretation is placed, the intention of the rule making authority and also the intention behind the object and reasons behind the Control Order and the Essential Commodities Act, 1955 would be frustrated. Thus, we are of the considered opinion that the view expressed by the High Court on this score also is absolutely incorrect and wholly unsustainable.

29. Apart from above, the words used in Paragraph 10 are “date of the order”. In the scheme of the Control Order, the order comes into effect from the date of receipt by the agent or the dealer. Once that becomes the decision, the commencement of limitation of 30 days for the purpose of Paragraph 10 would be the date when the order is effective. The High Court in Rani Sati Kerosene Supply Company and Others (supra) has opined that if the order of cancellation is not served on the affected person and the appeal period expires, there is the

possibility that the adverse order would become unassailable. The reasoning is totally fallacious. An appeal can only be preferred when the order is effective. The ineffective order, that is to say, uncommunicated order cannot be challenged. Therefore, the reasoning given by the court in earlier judgment is erroneous and hence, the reliance thereupon by the impugned order is faulty. There has to be a purposive construction of the words “from the date of order”. To place a construction that the date of an order would mean passing of the order, though not made effective would lead to an absurdity.

30. In view of the aforesaid analysis, we arrive at the irresistible conclusion that the High Court has erroneously interpreted Paragraph 9 and 10 of the Control Order and that is why it has arrived at an erroneous conclusion. When we had reserved the judgment, we were apprised that a fresh show cause notice had been issued for the self-same allegation by the SCFS and an appeal has been preferred against them. As we have held, the Director alone has the jurisdiction to pass the order, the said order remains a valid order and can be challenged in an appeal under Paragraph 10 and the appellate authority would be the State Government.

31. Consequently, the appeal is allowed and the order passed by the Division Bench in AST No. 177/2013 is set aside and the respondent no.1 is granted liberty to prefer an appeal within the prescribed period before the State Government. Be it noted, the Control Order has been amended in 2014 whereby the period of limitation has been extended. Be that as it may, we direct that the period of limitation shall commence from today. There shall be no order as to costs.

¹(2005) 4 CHN 0264

²(1987) 1 SCC 0424

³AIR 1958 SC 0353

⁴(2007) 7 SCC 0309

⁵(1992) Supp. (1) SCC 0471

⁶AIR 1954 SC 0194

⁷AIR 1961 SC 1500

⁸(1999) 7 SCC 0510

⁹AIR 1966 SC 1313

¹⁰(1969) 3 SCC 0028

¹¹(2005) 4 SCC 0480